

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 254 19 85Bill H 380 S _____Original bill & history / CH. Committee on JudiciaryHearing Date(s) Feb 15 ✓ CFeb 16 ✓ C

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Date Out Feb 16 ✓ CS. Committee on Business and IndustryHearing Date(s) Mar 14 ✓ C

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Mar 14 ✓ CDid this bill originate in an interim committee? Yes No

Committee _____

Report _____

HOUSE BILL NO. 380

INTRODUCED BY BRADLEY, RAMIREZ, SCHYE,
D. BROWN, CHRISTIAENS, MAZUREK

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Judiciary.
February 16, 1985	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
February 18, 1985	Second reading, do pass. Considered correctly engrossed.
February 19, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 21, 1985	Introduced and referred to Committee on Business and Industry.
March 14, 1985	Committee recommend bill be concurrent in. Report adopted.
March 19, 1985	Second reading, concurred in.
March 21, 1985	Third reading, concurred in. Ayes, 47; Noes, 0. Returned to House.

IN THE HOUSE

March 22, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 380

INTRODUCED BY

Christianne Hargrave
 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING
 NONDUPLICATION PROVISIONS FROM RURAL COOPERATIVE UTILITIES
 LAW; AMENDING SECTIONS 35-18-105 AND 35-18-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-18-105, MCA, is amended to read:

"35-18-105. Permissible purposes for incorporation.

Cooperative nonprofit membership corporations may be
organized under this chapter for the following purposes:(1) for the purpose of supplying electric energy and
promoting and extending the use thereof in rural areas, as
provided in this chapter;(2) for the purposes of making generally available in
rural areas adequate telephone service, cable television
service, or broadband facilities through the improvement and
expansion of existing telephone, cable television, or
broadband facilities and the construction and operation of
such additional facilities as are required to assure the
availability of such service to the widest practicable
number of rural users thereof, ~~provided that nonduplication~~
~~of lines, facilities, or systems providing reasonably~~
~~adequate service will result therefrom.~~"

Section 2. Section 35-18-106, MCA, is amended to read:

"35-18-106. Powers of cooperatives. A cooperative
shall have power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at
pleasure;(4) become a member in one or more other cooperatives
or corporations or to own stock therein;(5) construct, purchase, take, receive, lease as
lessee, or otherwise acquire and to own, hold, use, equip,
maintain, and operate and sell, assign, transfer, convey,
exchange, lease as lessor, mortgage, pledge, or otherwise
dispose of or encumber electric transmission and
distribution lines or systems, electric generating plants,
electric refrigeration plants, telephone lines, facilities
or systems (but not telegraph or radio broadcasting services
or facilities) as defined by law, lands, buildings,
structures, dams, plants and equipment, and any and all
kinds or classes of real or personal property whatsoever,
which shall be deemed necessary, convenient, or appropriate
to accomplish the purpose for which the cooperative is
organized;(6) purchase or otherwise acquire and own, hold, use,
and exercise and sell, assign, transfer, convey, mortgage,

pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness therefor and secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone

lines, facilities, or systems;

(10) conduct its business and exercise any or all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(c) make loans to persons to whom electric energy is

1 or will be supplied by the cooperatives for the purpose of
2 and otherwise to assist such persons in constructing,
3 maintaining, and operating electric refrigeration plants;

4 (13) in the case of corporations organized under the
5 provisions of 35-18-105(2):

6 (a) improve and expand existing telephone lines,
7 facilities, and systems in rural areas and construct,
8 acquire, operate, and furnish such additional telephone
9 lines, facilities, and systems as are required to assure the
10 availability of adequate telephone service to the widest
11 practicable number of rural users thereof; ~~provided that no~~
12 ~~duplication of lines, facilities, or systems providing~~
13 ~~reasonably adequate service will result therefrom;~~

14 (b) make loans to persons to whom telephone service is
15 or will be supplied by the cooperative for the purpose of
16 and otherwise to assist such persons in wiring their
17 premises for telephone service and installing therein
18 telephone fixtures, appliances, apparatus, and equipment of
19 any and all kinds and character and, in connection
20 therewith, purchase, acquire, lease, sell, distribute,
21 install, and repair such telephone fixtures, appliances,
22 apparatus, and equipment and accept or otherwise acquire and
23 sell, assign, transfer, endorse, pledge, hypothecate, and
24 otherwise dispose of notes, bonds, and other evidences of
25 indebtedness and any and all types of security therefor;

1 (14) do and perform any and all other acts and things
2 and have and exercise any and all other powers which may be
3 necessary, convenient, or appropriate to accomplish the
4 purpose for which the cooperative is organized."

-End-

HOUSE FINAL STATUS

1/24 REFERRED TO APPROPRIATIONS
 1/25 HEARING
 DIED IN COMMITTEE

378 INTRODUCED BY DONALDSON
 REQUALIFYING FOR UNEMPLOYMENT INSURANCE BENEFITS
 BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/23 INTRODUCED
 1/23 REFERRED TO BUSINESS & LABOR
 1/24 FISCAL NOTE REQUESTED
 1/31 FISCAL NOTE RECEIVED
 2/05 HEARING
 2/05 COMMITTEE REPORT-BILL DO PASS
 2/08 2ND READING PASS 81 15
 2/09 3RD READING PASS 83 16

TRANSMITTED TO SENATE
 2/11 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 3/07 HEARING
 3/19 TABLED IN COMMITTEE

379 INTRODUCED BY GARCIA, ABRAMS, ET AL.
 OPTIONAL PUBLICATION REQUIREMENTS FOR COUNTY
 COMMISSIONERS

1/23 INTRODUCED
 1/23 REFERRED TO LOCAL GOVERNMENT
 1/24 FISCAL NOTE REQUESTED
 1/28 FISCAL NOTE RECEIVED
 2/07 HEARING
 2/08 COMMITTEE REPORT-BILL DO PASS
 2/09 2ND READING PASS 77 20
 2/12 3RD READING PASS 79 18

TRANSMITTED TO SENATE
 2/13 REFERRED TO LOCAL GOVERNMENT
 3/12 HEARING
 3/13 COMMITTEE REPORT-BILL CONCURRED
 3/18 2ND READING CONCURRED 46 2
 3/20 3RD READING CONCURRED 47 3

RETURNED TO HOUSE
 3/23 SIGNED BY SPEAKER
 3/23 SIGNED BY PRESIDENT
 3/25 TRANSMITTED TO GOVERNOR
 3/26 SIGNED BY GOVERNOR
 CHAPTER NUMBER 193 EFFECTIVE DATE: 3/26/85

380 INTRODUCED BY BRADLEY, RAMIREZ, ET AL.
 ELIMINATING NONDUPLICATING PROVISION FROM RURAL
 COOPERATIVE UTILITIES LAW

1/23 INTRODUCED
 1/23 REFERRED TO JUDICIARY
 2/15 HEARING
 2/16 COMMITTEE REPORT-BILL DO PASS
 2/18 2ND READING PASS 98 0
 2/19 3RD READING PASS 98 0

HOUSE FINAL STATUS

2/21 TRANSMITTED TO SENATE
 2/21 REFERRED TO BUSINESS & INDUSTRY
 3/14 HEARING
 3/14 COMMITTEE REPORT-BILL CONCURRED
 3/19 2ND READING CONCURRED
 3/21 3RD READING CONCURRED

50 0
 47 0

RETURNED TO HOUSE
 3/23 SIGNED BY SPEAKER
 3/26 SIGNED BY PRESIDENT

3/27 TRANSMITTED TO GOVERNOR
 3/29 SIGNED BY GOVERNOR
 CHAPTER NUMBER 254 EFFECTIVE DATE: 10/01/85

HB 381 INTRODUCED BY REAM, VAN VALKENBURG
 APPROPRIATE MONEY TO OPI TO REIMBURSE DESMET SCHOOL
 DISTRICT
 BY REQUEST OF SUPERINTENDENT OF PUBLIC INSTRUCTION

1/23 INTRODUCED
 1/23 REFERRED TO APPROPRIATIONS
 3/26 HEARING
 3/28 COMMITTEE REPORT-BILL PASS AS AMENDED
 3/30 2ND READING PASS
 4/01 3RD READING PASS

80 18
 94 1

TRANSMITTED TO SENATE
 4/03 REFERRED TO FINANCE & CLAIMS
 4/09 HEARING
 4/17 ON MOTION RULES SUSPENDED
 PLACED ON 3RD READING 85TH DAY
 4/18 COMM REPORT-BILL CONCURRED AS AMENDED
 4/19 2ND READING CONCURRED
 4/19 3RD READING CONCURRED

50
 49

RETURNED TO HOUSE WITH AMENDMENTS
 4/23 2ND READING AMENDMENTS NOT CONCURRED
 4/23 CONFERENCE COMMITTEE APPOINTED
 4/24 CONFERENCE COMMITTEE DISSOLVED
 4/24 FREE CONFERENCE COMMITTEE APPOINTED
 4/24 FREE CONFERENCE COMMITTEE REPORT

60 2

HOUSE
 4/25 2ND READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED
 4/25 3RD READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED

87
 86

SENATE
 4/25 2ND READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED
 4/25 3RD READING FREE CONFERENCE COMMITTEE
 REPORT ADOPTED

50
 49

5/01 SIGNED BY SPEAKER
 5/01 SIGNED BY PRESIDENT

5/02 TRANSMITTED TO GOVERNOR
 5/10 SIGNED BY GOVERNOR

There being no further questions, hearing closed on HB 481.

CONSIDERATION OF HOUSE BILL NOS. 380 and 577: Rep. Dorothy Bradley, District #79, appeared and offered testimony regarding these two bills. Rep. Bradley said the area of telecommunications is an enormously complicated field. She gave the committee some general history in regards to this subject. She spoke about the problems that are facing us and what the present situation is in Montana. She feels that HB 380 and 577 present several solutions. The purpose of this measure (HB 577) is to try to help Montana move from the regulated monopoly situation that it has had all these years into the competitive market, and allow competition to have its place. At the same time, the purpose of this measure would be to try to maintain universal service and keep it at an affordable rate so that no one will be thrown out of the system who is unable to afford a telephone. This legislation regulates what is referred to as a two-way switched voice grade access. She also submitted copies of Statement of Intent.

CONSIDERATION OF HOUSE BILL NO. 380: Rep. Bradley stated that under the present system, the co-ops were allowed to construct their own facilities as long as they didn't duplicate the other facilities. She said that in the "new world," (after the AT&T breakup) there are many competitors coming in. The effort taken in this measure is to free up the co-ops along with bringing up everybody else, and allow them to duplicate services just like everyone else will be duplicating services. This would allow the co-op customers to get better service at a cheaper rate.

Cal Simshaw, staff attorney for the Public Service Commission, testified in support of the bill. He said the PSC requested that HB 577 be introduced because the commission believes that the point has been reached in the evolution of telecommunications in Montana where a rewrite of the telecommunications statutes is required if the people of Montana are to participate in the benefits of competition in the industry. A copy of his testimony was marked Exhibit A and is attached.

Jack Ramirez, representative from District #87, urged the committee to support both HB 380 and HB 577.

Jim Hughes, representing Mountain Bell Telephone, testified before the committee. Mr. Hughes described to the committee what has happened in the last couple of years that has changed some of the ways in which business has been done in the past in this particular arena and how HB 577 addresses this issue.

John Scully, representing AT&T, pointed out that the efforts as addressed in HB 577 is one that needs the committee's support as a result of the compromises that have been ongoing during the last few months. He asked the committee to pass the bill.

Mary Buckley, representing MCI Telecommunications Corporation, testified as a proponent to the bill. She submitted the MCI statement (Exhibit B) which described some background on MCI. She informed the committee although MCI is not in business in Montana at present, they hope to be in the near future. In reviewing the bill, she sees some concerns that may prohibit MCI from coming into the state. They support the intent of the bill which provides competition. They also support the orderly transition into competition. However, they do not see in the bill a provision for orderly transition. There are no standards or no trigger mechanisms that would define competition. She further stated that Mountain Bell currently has 100% of the market or close thereto. If MCI were to come in and gain 2% of the market, that would not be full competition. Another concern MCI has with the bill is the portion dealing with prohibition of cross-subsidization of predatory prices. She submitted some language for the committee's consideration which she feels would tighten up this intent -- they actually made it stronger to insure that all the minimum costs, in terms of the maximum-minimum rates that are set, that the minimum costs would be cost compensatory. We feel that this is the key to avoiding predatory prices. (A copy of her suggested amendments were marked Exhibit C and attached hereto.)

Dick Thronson, general manager of Valley Real Telephone Cooperative and Valley Electric Cooperative of Glasgow, testified in support of HB 380. He addressed another problem that the cooperatives have because of the law restricting duplication of provision. In many cases because of the duplication law, they are prevented from consolidating through their own network and often prevented from using modern technology. They feel they should be allowed to compete on an equal footing with the rest of the carriers.

Jay T. Donnen, manager of the state Association of Electric and Telephone Cooperatives, testified in support of both HB 380 and HB 577.

There being no further proponents, Chairman Hannah requested the opponents to testify at this time.

OPPONENTS:

Kurt Furst, regional manager of state legislative affairs for GTE SPRINT, stated that HB 577 does contain certain positive features; however, it represents an overly broad, and an unnecessary stab at deregulation which may well harm the development of competition in Montana. A copy of his written testimony was marked Exhibit D and attached hereto. He did state that GTE SPRINT is not opposed to HB 380.

There being no further opponents, Rep. Bradley closed on both HB 380 and HB 577.

The floor was opened to questions from the committee.

In response to a question asked by Rep. Addy, Mr. Furst stated that the intent of these bills has nothing to do whatsoever with local rates. They are still regulated. The local service rates are going to go up whether this bill is passed or not. He doesn't feel that Mountain Bell would say that they don't intend to raise local rates if this bill passes.

Rep. Keyser asked Cal Simshaw if he has a problem with the time frame pointed out on page 7 of the bill. Mr. Simshaw stated that the commission does not.

Jim Paine, Montana Consumer Counsel, addressed one of Rep. Krueger's questions. He said the counsel is statutorily charged with representing the consumers of the state before the PSC and appropriate courts. Mr. Paine further stated that he supports the bill because he feels something must be done. This bill does not address the problems that are going on nationally -- the forces that are going to cause upward pressure on local exchange rates. There is not much that one is going to be able to do about the competition that is coming. He feels that it is important to allow the existing telephone companies to compete. He feels there are safeguards in the bill.

Following a period of general questioning, hearing closed on HB 380 and HB 577.

CONSIDERATION OF HOUSE BILL NO. 541: Rep. Paula Darko, District #2, testified as HB 541's chief sponsor. She informed the committee that Judge Robert M. Holter from the 19th Judicial District, requested the introduction of HB 541 due to some of the problems he was experiencing as a judge. HB 541 is an act providing that a party who unreasonably and vexatiously multiplies legal proceedings is responsible for payment of increased court costs, attorney fees, and other expenses.

Judge Robert M. Holter, 19th Judicial District, testified in support of the bill. He does not view this bill as an anti-lawyer bill; but rather, he views this as a pro-lawyer bill. He has had problems with pro se appearances, and he has had problems with lawyers who just simply conduct their proceedings by fouls.

Judge Michael Keedy, 11th Judicial District, testified in support of this bill. He pointed out that there is a tempting opportunity in nearly every litigation for a lawyer or his client or party appearing on his own behalf to abuse the judicial process to his or her convenience for tactical reasons or for personal gain or the satisfaction of vengeful motives. This bill would remedy that problem somewhat.

There being no further proponents or opponents, Rep. Darko closed. She said the bill is needed, and it is patterned after federal code.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/15/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene		✓	
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 16, 1985

An executive session of the Judiciary Committee was called to order by Chariman Tom Hannah on Saturday, February 16, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Montayne and Rep. Brown. (Rep. Brown arrived later).

ACTION ON HOUSE BILL NO. 577: Rep. O'Hara moved that HB 577 DO PASS. The motion included adopting the Statement of Intent. The motion was seconded by Rep. Gould.

Rep. Addy moved to amend the bill as follows: Page 5, line 17 following "ranges" insert "so long as the minimum rate is fully compensatory". On page 11, following line 11 insert: "NEW SECTION. Section 15. No preemption of laws governing anti-competitive activity. Nothing in (Sections 1 through 10 and 13) in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity." The motion was seconded by Rep. Darko and carried with Rep. Keyser dissenting.

Rep. Addy moved that HB 577 DO PASS AS AMENDED. The motion was seconded by Rep. Gould, and discussion followed.

Rep. Keyser feels the bill should pass because regulations should be placed before the various companies find themselves involved in a lawsuit. The question was called, and motion to pass as amended carried unanimously.

ACTION ON HOUSE BILL NO. 380: Rep. O'Hara moved that HB 380 DO PASS. The motion was seconded by Rep. Miles. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 481: Rep. Keyser moved that HB 481 DO PASS. The motion was seconded by Rep. O'Hara, and carried unanimously.

ACTION ON HOUSE BILL NO. 541: Rep. Darko moved that HB 541 DO PASS. The motion was seconded by Rep. Mercer and carried unanimously.

ACTION ON HOUSE BILL NO. 585: Rep. Gould moved that HB 585 DO PASS. The motion was seconded by Rep. O'Hara and discussed.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 7:00 a.m.

Date 2/16/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne		✓	
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 16 1935

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **330**

FIRST reading copy (**WHITE**)
color

**ELIMINATING NONDUPLICATING PROVISION FROM RURAL COOPERATIVE
UTILITIES LAW**

Respectfully report as follows: That **HOUSE** Bill No. **380**

.DQ PASS

utilize this type of tax credit. Bob Gannon explained they were not able to do so because of their financial situation. Senator Gage wondered if they had checked out leasing the plant as opposed to leasing with an option to buy. He explained that the federal laws on leasing are very strict and Montana Power will be able to retain the option of being able to buy back the facilities in 25 years at a fair market value. Senator Boylan wondered if this would end up the same as a holding company. Bob Gannon felt it was not the same. Senator Christiaens wondered if it was an open end lease. Bob Gannon explained it is a lease with the ability to acquire the assets at the end of 25 years at a fair market value. Senator Williams wondered if this could possibly lower rates per kilowatt hour and was told it possibly could. Senator Thayer asked about the tax credit and was told it was a 15 year depreciation accelerated for 15 years on approximately \$300 million. The hearing was closed by Representative Harp on House Bill 852.

DISPOSITION OF HOUSE BILL 852: Senator Goodover MOVED THAT HOUSE BILL 852 BE CONCURRED IN. The motion carried. Senator Jacobson will carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL 380 and 577: Representative Dorothy Bradley, House District #79 of Bozeman, is the chief sponsor of these two bills. She explained the Consumer Council, AT & T and Mountain Bell have all joined together to draft these measures. She gave a brief history of the telecommunications industry. She noted that a nationwide communications system has been created through a regulated monopoly so that one entity was guaranteed all of the business in return for government regulations and then a ceiling was put on the profits. Some twenty years ago there were some who felt they wanted to enter into the market also. A seven year antitrust suit followed and some new federal regulations were passed. This allowed AT & T out of their "fence" and allowed other kinds of competition to enter into the market. Mountain Bell is now a separate entity from A T & T. Montana is susceptible to the problems because of there being no requirement for a certificate of public convenience and necessity so a competitor can just move in. Montana is divided into two areas called LATTA and this just means that when a phone call crosses over this line that A T & T is entitled to that business and this is the reason you are billed separately when a call crosses that line. With the present situation anyone can come in and make a long distance trunk line and "skim off the cream" where there is a high volume. Mountain Bell feels they are at a disadvantage because they are required to serve all the local exchanges. These competitors can charge cheaper long distance rates and they still have their fixed costs and would be left dividing up the rates with fewer customers. The coops are in somewhat the same situation. House Bill 577 moves away from regulated monopolies and into more competitive markets. It would just give clarification of what is regulated and what is not. Private telecommunications are not regulated nor are resales. The bill would provide that before you can provide regulated service you have to file a notice with the PSC. Cross-subsidization would be prohibited and clarified in the bill. The PSC would be allowed to tariff or detaiff rates. She noted that this is different than

deregulation because the PSC still retains different areas of authority. It does allow competition of rates however.

House Bill 380 deals with coops. In present law they would not duplicate the areas that Mountain Bell had already but this would free them up so they can compete with the rest of the competition. If you live in a city you might be able to benefit from the competition but for many others in rural areas especially she feels the rates are going to keep going up. She hopes by allowing some flexibility this will compensate.

Some of the arguments that MCI and SPRINT have raised include that they would like to postpone the time for detariffing because it would give them more time to become established. They fear predatory pricing from the giants. She felt though that detariffing would be to their advantage. Predatory pricing is not legal anyway. The PSC will see that this does not happen.

Another argument is that there is no criteria for detariffing. She felt the legislature was not the body to decide that and felt this should lie with the PSC. She felt if the state waits for two more years it would just tie the hands of Mountain Bell and she felt the consumers will be hurt. She felt the amendments being proposed in the legislation by MCI would put Mountain Bell at a disadvantage and if we want competition we should not tie the hands of one or the other.

PROPOSERS: Joan Mandeville, of Helena, representing PSC, feels it has come to the point that a rewrite of legislation is necessary. The bill would assure that a continued role will be played by the PSC and provide regulation as a transition to a fully competitive industry. It would define what needs to be regulated and provide needed regulatory flexibility. (EXHIBIT 1) She explained that the amendment proposed would just strike the word "fully" before compensatory on page 5, line 24. (EXHIBIT 2)

Jim Hughes, Mountain Bell, gave an overview of what is happening today in the industry. He noted the services they used to provide and what they provide today since divestiture. They are now primarily a local service company. He noted that the LATTA division in the state only serves one purpose and that is to inhibit Mountain Bell from providing service between the two areas. He gave an explanation of the regulatory balancing act where you raise the prices in one area to compensate for costs in another area. The competition for business is really in the long distance service and private lines areas. They would like to see fair play and see some flexibility for their company also. He felt residential rates are going to have to go up to what they actually cost eventually. MCI and SPRINT are just two of the entities trying to get long distance customers. The way the present law stands, Mountain Bell just cannot compete. There have been some real compromises made to resolve this dilemma.

Jim Payne, Montana Consumer Council, feels if this legislation passes every time a regulated telephone agency came before them they would be checked out closely and if there was a disagreement on costs,

they would propose an adjustment be made. They are in favor of this legislation.

Jay Doren, representing the telephone cooperatives, and John Scully representing A T & T were present also and in support of the legislation.

OPPONENTS: Woodside Wright, speaking on behalf of GTE SPRINT, disagrees with the legislation proposed. They feel that House Bill 577 will recreate the monopoly without regulatory oversight and would result in the prevention of Montana citizens from receiving competitive low cost long distance rates. They feel that an interim study should be done instead. (EXHIBIT 3) He felt the statute grants rulemaking authority and felt some guidelines should be established beforehand. He feels there is no effective method of challenge. He felt money could be better spent in developing good services rather than fighting an antitrust suit. He urged consideration of questions on his handout before consideration.

Mary Bulkley, with the West Division of MCI Telecommunications Corporation, distributed a copy of her testimony, some newspaper clippings, a chart of how MCI provides long distance service and some amendments they would like proposed to House Bill 577.

She noted MCI has no monopoly offerings or other sources of market power. She felt that this bill would attempt to regulate all services in the same manner and they feel they lack the power to participate in the behavior that causes regulation to be necessary. She thinks the bill is just too broad to prevent potential market power abuses and does not give the commission clear guidance as to how policy should be addressed. (EXHIBIT 4) She explained they have no network established yet in the state and would be at a disadvantage until they were established.

Questions were then asked from the committee members. Senator Weeding asked Jay Doren from the rural cooperatives to respond. He noted they had suggested 12 changes and all of these had been incorporated into the bill. He felt it was time for everyone to be deregulated. Senator Goodover asked about the proposed amendments of MCI and Representative Bradley stated she opposed all of these. Senator Gage wondered if a company could hook up a line in his private home and be regulated. Larry Huss, from Mountain Bell, stated the purpose of the language is for when service is offered to a third party, then it is considered a public network and this would then be regulated. A business phone in a private home would not be under regulations. An entity could have a private and a resale facility in one location.

Senator Gage wondered what the criteria would be for making the decision that it was time for an alternative. Rep. Bradley explained this would be under the rulemaking authority by the PSC.

Senator Fuller asked Mary Bulkley what a network was and was told it was the microwave, fibrotics, and any other combination they choose to set up a network.

Senator Fuller asked Joan Mandeville what the impact of a delay would be. She claimed people are building their own systems already and she feels that a very small number of customers are making up a large portion of the total revenues and if the companies such as MCI and SPRING take away the bulk of the large volume customers it would severely impact the costs to those customers remaining. Jim Payne expressed concern in this regard also.

Senator Goodover asked Larry Huss to respond. He noted that MCI's views on fairness are very different than what Mountain Bell feels is fair. He left a transcript of hearings before the public utilities in Colorado. (EXHIBIT 5) They do not care what the costs are to put in a system and there is no way to note from their records whether or not the rates they are charging are being used to subsidize another area's rates.

Senator Boylan wondered how many FTE's this might involve if this legislation were to pass in the PSC. Joan Mandeville stated they had not done a fiscal note but did not anticipate putting on any additional staff.

Senator Thayer wondered about skimming off the high volume customers and Woodside Wright's comment that their customers were mostly rural customers. He did not know how this percentage had been calculated. Senator Christiaens wanted an explanation of the need for a certificate of necessity. Joan Mandeville explained several states have these and they decided it was better for the customer to have competition in certain areas and we do not have this option. Jim Hughes noted that Mountain Bell would welcome competition however.

Mary Bulkley noted they only deal with long distance service. They have cheaper rates because they have a poorer quality line to access and therefore can charge cheaper rates.

Senator Weeding wondered if the cooperatives were seeking to develop long distance lines also and they stated they were not. They just want to be able to serve their customers more inexpensively. Senator Gage asked about forbearance and was told this only applies to rates. Rep. Bradley felt that Montana has been forced into competition and feels the amendments proposed by MCI would stifle competition. She feels we need to be fair to all parties involved. The hearing was closed on House Bills 380 and 577.

DISPOSITION OF HOUSE BILL 380: Senator Goodover MOVED THAT HOUSE Bill 380 BE CONCURRED IN. The motion carried. Senator Haffey will carry the bill on the Senate floor.

CONSIDERATION OF SENATE BILL 391: Senator Christiaens reported on progress of the subcommittee. He stated John LaFaver was going to put together some revenue figures for the committee. John Poston also has a "weekender" video machine available for review.

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/14/85

SENATE
SENT
#

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

MARCH 14 1965

MR. PRESIDENT

We, your committee on **BUSINESS & INDUSTRY**

having had under consideration **HOUSE BILL** No. **380**

third reading copy (blue)
color

**ELIMINATING NONDUPLICATING PROVISION FROM RURAL COOPERATIVE
UTILITIES LAW (Haffey)**

Respectfully report as follows: That **HOUSE BILL** No. **380**

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXX~~
~~DO NOT PASS~~

Mike Halligan

Chairman.